

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 14TH DAY OF JULY 2011 AT 9:00 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Plan Commission was called to order by the Chairperson, Mike Yoder, with the following members present: Meg Wolgamoood, Tom Holt, Steve Warner, Jeff Burbrink, Roger Miller, and Dennis Sharkey. Staff members present were: Mark Kanney, Planning Manager; Duane Burrow, Senior Planner; Robert Nemeth, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Warner/Miller*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 9th day of June 2011, and of the Executive Session of the Plan Commission held on the 6th day of July 2011, be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Burbrink/Holt*) that the legal advertisements, having been published on the 1st day of July 2011 in the Goshen News and the 3rd day of July 2011 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Miller/Burbrink*) that the Elkhart County Zoning Ordinance and Elkhart County Subdivision Control Ordinance be accepted as evidence for today's hearings. With a unanimous vote, the motion was carried.

5. The application for the vacation of a public right-of-way for ***Lippert Components, Inc.*** represented by Brads-Ko Engineering & Surveying, on property located on the South end of Sourwood Drive, 750 ft. South of Hackberry Drive, 2,650 ft. South of CR 38, 1,850 ft. West of US 33 in Elkhart Township, zoned DPUD-M-1, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #65781SourwoodDr-110526-1*.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen, was present on behalf of this request. On the aerial, he pointed out the cul-de-sac is entirely on Lippert property that has been subdivided. Corry Drive has been constructed south to County Road 40 where it intersects and has access. The agreement was that through the process Lippert would donate/dedicate/give/sell right-of-way for the extension of Corry Drive to Sourwood and continue north. Mr. Pharis stated that Goshen City wants this right-of-way vacated. He noted that they have already appeared before the City Planning Commission and the City Council for the portion contained within the city. They have approved that vacation. He stated that he is trying to track the vacation of the right-of-way of that cul-de-sac with the approved plat, which would go to the Commissioners. He hopes that the vacation would be approved first, then the plat which does not show the vacated cul-de-sac.

There were no remonstrators present.

Mr. Burrow said the staff would like the Plan Commission to add a condition that the existing 25 ft. utility easement that crosses the right-of-way be reserved as part of the approval

(noted on the plat as a 25. ft. gas main easement). This is within the ordinance that the commissioners will sign, but he said the staff feels it should also be reiterated by the Plan Commission. Mr. Pharis noted that it is shown on their plat.

A motion was made and seconded (*Burbrink/Sharkey*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Holt/Miller*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for the vacation of a public right-of-way be approved in accordance with the Staff Analysis with the condition that the existing 25 ft. utility easement that crosses the right-of-way be preserved. The motion was carried with a unanimous roll call vote.

6. The application for an amendment to DPUD Ordinance # PC 92-08 to be known as ***BUILDER'S CENTRE PLAZA DPUD***, for Builder's Association of Elkhart County represented by Brads-Ko Engineering & Surveying, on property located on the South side of CR 20, 585 ft. East of CR 11 in Concord Township, zoned DPUD-B-1, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #25428CR 20-110531-1*. According to Mr. Burrow, the staff recommendation for denial of the request to exceed the square footage limitation is based on past policies. He said Elkhart County has identified that limited access roads were not to be treated as front yards.

Present on behalf of this request was Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen. Charlie McIntire with Bull Frog Outdoor Advertising, 220 Club Course Drive, Fort Wayne, Indiana is also present.

Mr. Pharis explained that the Builder's Association has been located at this site for nearly 20 years. The home building industry has declined over the last few years. Builders that historically built 15-25 homes per year are trying to survive on up to five homes per year. Small builders are now building one home or no homes a year, while others are looking for work in other industries. The opportunity presented to the Builders Association to place billboards would generate income for the Association that can be used to assist those builders still in business in Elkhart County.

Mr. Pharis submitted a detail of the lighted billboard [*attached to file as Petitioner Exhibit #1*]. He noted that the site is zoned B-1, and has been since 1991. Specification H permits off-premise outdoor advertising signs in a B-1 zone. The reason the staff did not issue the permit is due to the location of the Bypass. The current zoning ordinance requires unlighted signs to have square footage equal to six times the linear frontage of the lot. The subject tract has 371.77 feet of linear footage on Mishawaka Road; however, there is over 800 linear feet on U.S. 20. During discussions with staff, they were asked not to count that frontage due to the historical decisions by the Plan Commission. Therefore, everything was based on the 371.77 feet frontage. With lighted signs, it is permissible to have three times that amount, unlighted is six times.

The sign they are proposing on Mishawaka Road meets all of the standards of the ordinance. Based on three times the length, they have 600 square feet for that sign. The second sign, which would be located in the back yard, has 378 square feet. When multiplied by two, that number increases to 786 square feet. After calculating the area, he said a 241 sq. ft. is needed.

Mr. Pharis said he received the Staff Report three days prior to the hearing. Since that time he talked to Mr. McIntire about the possibilities of not lighting the sign on Mishawaka Road. Mr. McIntire was receptive to that suggestion. He then submitted calculations of the proposed signage [*attached to file as Petitioner Exhibit #2*], which he went on to review with the Board. After reviewing the

calculations with the Board, he indicated that a variance is not required because the square footage falls well within the permitted square footage.

Mr. Pharis asked the Board to consider either forwarding a recommendation to the county commissioners for two lighted signs with a variance; or sending it forward with a favorable recommendation for one lighted sign and one unlighted sign, with no variance.

Mrs. Wolgamood asked if both signs are for the purpose of advertising, meaning that both sides are available for rent. Mr. Pharis responded affirmatively, adding that special provisions have been made for any member of the Builder's Association of Elkhart County to receive a discounted rate to use those signs.

Mr. Yoder asked if the church located across Mishawaka Road takes up the entire frontage. Mr. Pharis stated that it did and explained that the property to the west is also commercial property. Further west is a mobile home park.

Mr. Miller asked if there was a significant difference in revenue between a lighted and unlighted sign. Mr. McIntire explained that the sign on the Bypass would require lights, which is why he would forego lights on Mishawaka Road if necessary. His reasoning was that Mishawaka Road is a local traffic road; however, the sign on the Bypass would attract more businesses catering towards transient business, such as hotels, restaurants, etc. He estimated the difference in revenue would be between 20 and 25 percent. He explained that the sign on the Bypass would measure 10-1/2' x 36, and would have two bulbs on each side of the sign. The sign on Mishawaka Road would have one bulb. The signs would be illuminated, not electronic.

Mr. Miller inquired about the current sign inventory on U.S. 20 in Elkhart County. Mr. McIntire did not think there were currently any billboards. Mrs. Wolgamood said the closest sign is for Elkhart Christian Academy. Mr. Burrow noted that they are in compliance with their original site plan.

There were no remonstrators present.

A motion was made and seconded (*Sharkey/Burbrink*) that the public hearing be closed and the motion was carried with a unanimous vote.

Mr. Yoder stated that he was not a huge fan of billboards but stated that he did understand what is going on in the business community. He indicated that he was agreeable with either approach. He did not see the benefit of having a lighted sign on Mishawaka Road at night since that road is not heavily traveled in the evening. He noted that it is across the street from the church and probably would not interfere with any quality of life issue. Board members were in agreement that a sign on Mishawaka Road would be visible to those traveling on the Bypass. If approved, Mrs. Wolgamood predicted that approval would likely open up more requests for signage. Both Mr. Holt and Mr. Warner agreed.

Mr. Yoder noted that they have been presented with two options. The Board could forward it without the lighted sign since it meets all of the standards. There is not a need for variance if the sign on Mishawaka Road is not lighted.

Mrs. Wolgamood asked staff if, based on the lighted and unlighted figures, they would have been obligated to allow the request if the petitioner had sought a permit and no variances were required, and it was not in that PUD. Mr. Burrow stated that they would be obligated to do so. He explained that under the new PUD's there is a requirement for compliance with the site plan support drawing. Under the period of time when this was originally adopted and the rights were vested that was not a requirement.

Mr. Sharkey agreed that the signs are detracting for local residents, although they are helpful for travelers. Mr. Holt wondered why three signs were required within a short space. He is concerned that approval may open Pandora's Box.

Mr. Burrow noted that the only restriction on spacing is established by federal law. He stated that Mr. McIntire has indicated that his spacings will be far enough apart to comply with state requirements. He will need to secure a state permit from the U.S. Highway Department who can address the distance.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Holt/Wolgamood*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be denied. The motion was carried with the following results of a roll call vote: Wolgamood – yes; Holt - yes; Warner – yes; Burbrink – yes; Miller – no; Sharkey – no; and Yoder – yes.

7. The application for a zone map change from M-1 to R-1 for **Joey W. & Kelly L. Cripe**, on property located on the Southwest corner of Warren Street and Grand Street in Middlebury Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #401WWarrenSt-110523-1*. He then explained that he advised Mr. Cripe that he did not need to be present for the hearing today as he would present this application to the Board.

With the exception of the property across the street, Mr. Sharkey noted that this neighborhood is zoned residential. Although the subject parcel is zoned M-1, Mr. Sharkey asked if it has been used residential and Mr. Nemeth replied yes.

Mrs. Wolgamood said she thinks this is one of the original homes in Middlebury and the Board of Zoning Appeals really struggled with this. They felt the petitioner should be able to do what he wants to do, but they did not feel it was in his best interest to say yes in an M-1 zone because he couldn't rebuild if anything happens to the building. If the variances are approved by the BZA next week, she said the petitioner would be able to move forward with building a garage and installing a pool.

It was noted that the Middlebury Town Council had submitted a letter in support of allowing the garage, either as a Use Variance or a rezoning.

There were no remonstrators present.

A motion was made and seconded (*Sharkey/Holt*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Sharkey/Holt*) that the Advisory Plan Commission recommend to the Middlebury Town Council that this request for a zone map change from M-1 to R-1 be approved in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

8. The application for a zone map change from a Detailed Planned Unit Development-M-1 to M-1 for **Mitchell & Tracy Lynn Dewitt** on property located 2,000 ft. North off of US 33, 2,600 ft. West of CR 3 in Baugo Township, was presented at this time.

It was noted that the public hearing was closed.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #0US 33-110413-1*. This request was tabled from last month to allow the petitioner time to discuss the matter with Brads-Ko Engineering & Surveying. Staff is recommending withdrawing the

rezoning from DPUD-M-1 to M-1 because Brads-Ko filed to amend the DPUD for the August, 2011 Plan Commission meeting. Mr. Nemeth noted that it will be presented as a formal amendment rather than a straight rezoning.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Holt*) that the Advisory Plan Commission accept the withdrawal of this request in accordance with the Staff Analysis. With a unanimous roll call vote, the motion was carried.

9. Plan Director Staff Item.

Mr. Yoder explained that the Executive Committee posted the position for Plan Director. There were approximately 20 applicants. The applications were reviewed and several internal and external candidates were interviewed. A candidate was brought to the Executive Session the week of July 4, 2011. Mr. Yoder, acting as Chairman, brought forth a recommendation to hire Chris Godlewski. After the executive meeting, Mr. Yoder met with Mr. Godlewski who was agreeable to the terms that were offered in terms of salary and performance review. He is available to assume the position on July 27, 2011, if the hiring is approved at this time.

A motion was made and seconded (*Holt/Wolgamood*) to hire Mr. Godlewski as the Elkhart County Plan Director. Unanimous roll call vote.

Mr. Yoder said that he will notify Mr. Godlewski. He stated that he would be a good addition to the staff. He will discuss with him the desire of the Executive Committee to work with him on a regular basis in the beginning. It was determined that the Executive Committee would meet with Mr. Godlewski after the first three weeks.

10. Groundwater Remedies Staff Item

Mark Kanney provided the Board with discussion points put together by the Staff. He stated that they are just trying to point out some of the major issues that are involved. Obviously, building where there have been or could be groundwater issues is a bad idea. The staff concurred that the situation happens when a customer buys a lot and picks a house design which includes a basement, without knowing if they are going to have high groundwater. It appears that the homeowner is left on their own, and likely would not have any idea if they were going to be able to build that basement. As happens in any discussion along these lines, the question seems to be "who is responsible?" Should the builder tell the homeowner? Should the developer tell them? Should the County tell them? Or should the homeowner know on their own, i.e. buyer beware?

Mr. Kanney noted that in 2008 there was a large number of wet basements. The commissioners spent a great deal of time with residents who asked why the government allowed that to happen. Numerous meetings took place with Jim Kolbus and Barry Pharis, where many scenarios were presented. As a result of those meetings, Mr. Kolbus created a disclaimer (Appendix 4 in packet). Basically, the disclaimer states that the issuance of a permit, or an inspection does not ensure that there are no problems. Like the developer, and the property owner, Elkhart County Planning & Development does not have any clue where the groundwater is. Upon further discussion, the staff felt that the current approach is not working. The staff felt that the best way for a property owner to know what they are doing is to determine where groundwater is in relation to putting in a basement. The only way to do that is with a soil boring, but it is not the same type of boring used for a septic, although the two can interchange. A Soil Scientist can see where the water fluctuates historically. He is looking for evidence of high water. If that information

were to become available, the staff recommends that it become a requirement on every lot for primary approval. Obviously, it would cost developers some money but that information would be available on a primary approval or for a conscientious buyer or builder, or for the staff. While it may not dissuade them from building, at least the information would be available. The next step would be that the developer makes the decision on the front end on the plat. The developer would indicate on the plat which lots are eligible for basements and those lots which are prohibited from having basements. Mr. Kanney noted that the County has never gotten involved with the architectural aspects of what someone does on their property. Warnings have been placed on plats, but it has never been stated that it was not allowed.

Mr. Yoder explained that the problems encountered in the Brynwood subdivision, on the north side of Simonton Lake, are what brought this issue to the forefront. He noted that even an infinite number of sump pumps would not keep basements dry. People are pumping water into the street which then goes into the retention areas. The retention areas, designed to be dry bottom, are never dry anymore. Now there are cat tails in that retention area. That would not be a big issue unless the retention area has an MS4 designation, requiring that it remains dry. A violation of the MS4 design would occur if it was not kept dry. Secondly, the homeowners in that area say that as more homes are built the water is circulating from one basement to another. Another problem, very evident in the subdivision on C.R. 20 to the east of C.R. 29, involves drainage issues. There has been considerable controversy with the drainage issue in that subdivision. It appears that homes on the hill are spring-fed. A couple of homes are pumping water out onto their lawns. It goes across the sidewalks in the subdivision, which results in a sheet of ice in the winter. This occurs anytime a homeowner pumps basement water onto the street. It creates extra safety issues and challenges for the Highway Department. The blending of salt and sand does not always take care of these ice sheets. Not only is the homeowner affected, but a broader group of people is affected. One of the residents at Brynwood is adamant that no other homes with a basement be built because it just contributes to the existing problems.

The staff feels that the best way to resolve this is to hire a soil scientist and take a boring. They would be able to easily determine the suitability of a basement at the location in question.

Mr. Sharkey asked if the recommendation is to have everyone get a soil boring before building a house. Mr. Kanney responded affirmatively. Mr. Sharkey noted that the majority of homes are dry, and questioned the additional expense for those homes. Mr. Kanney said a "buyer beware" approach could be taken.

Mr. Miller inquired about the cost of a soil boring. Mr. Kanney estimated that the cost would be approximately \$250.00. A boring is required for every site with a septic, so it is possible that this boring could tie in to that. The boring they are proposing goes deeper and is more expensive.

Mr. Miller stated that he often sees first time homeowners who are not savvy and do not know what questions to ask. There is no checklist provided to guide them in the process. He believes the department is set up to assist people, and in the process, keep them from making bad decisions.

It was noted that some of the issues arose when someone, fully aware of the water issues, built the house but subsequently sold the house. The second owners are the ones who are complaining. Mr. Warner stated that there was a problem with property north of the curb on C.R. 18. The property was located between C.R. 18 and U.S. 20. A request came to the Board with a higher density of homes than is currently there. The property had a 36" or 42" seasonal high water

table. The developers were determined to develop that property so they came back with a lower density of homes and received approval. He would like to know what is happening with that situation. He noted that those are the type of situations he feels the Board needs to protect against.

Mr. Kanney stated that there is no solution to building in high groundwater. There may be a temporary fix but building in an area with high groundwater is not something that anyone really wants to deal with.

Mr. Yoder noted that there is nowhere to pump the water. In situations that already exist, the Highway Department will work with residents to pump it directly into the drainage system just to keep it off of the sidewalks and out of the street. However, this just puts it back in the retention areas and it goes through the whole cycle again. The Highway Department works to resolve the safety issue but it does not solve the problem in the first place. While he does not know the actual percentage of homes that are dry, he does agree that the majority of property is not a problem. He noted that groundwater levels vary throughout the county.

Mr. Sharkey suggested that residents sign a waiver when they obtain a building permit. Mr. Kanney said there is a waiver prepared but it has not yet been implemented.

Mr. Burbrink asked about the accuracy of the county soil maps, in terms of determining the location of seasonal high water tables. Mr. Kanney stated that he did not know. He explained that the Health Department will not use the maps in terms of specifics. He thinks they do give a hint about water tables, and believes they are better than they used to be.

Mr. Kanney noted that over-the-ground flooding and groundwater are two different things. Flooding caused by the river is different than groundwater flooding.

In the audience was Barry Pharis, Brads-Ko Engineering and Survey, who said he feels the approach to groundwater issues should be both reactive and proactive. The reactive approach should be used when dealing with subdivisions that are existing and proactive for future subdivisions in Elkhart County. He said that his firm uses the soil maps constantly. The maps provide information on soil types and the water levels for that type of soil. Those maps are the first alert in terms of how many soil borings they will have. He provided two examples. In Wakarusa his firm worked on Deer Creek Villas. Within that subdivision the soil maps were inconsistent. Initially, 20 soil borings were completed, with a wide variety of results. At this time, 48 soil borings have been completed. The subdivision has sanitary sewer and water so the borings were not for septic. The 48 soil borings reflect one boring for every lot. They created a plot plan for every single lot. That plot plan reflects the lowest acceptable level for a basement. The client received the 48 plot plans. There are 48 plot plans provide elevation and are available for staff to look at when someone requests a building permit.

The plat for Weaver Woods had an attached note from the surveyor that did the plat indicating that no basement should be in the subdivision; however, houses were built in that subdivision with basements. There were incredible problems with those homes. Mr. Pharis explained that his firm was hired by the new owner to retrofit it. He was also involved with a deposition with seven or eight attorneys who questioned him about this subject. He feels that the person who is responsible to let the buyer know about groundwater issues is the developer. He explained that at Weaver Woods 15 soil borings were conducted. The seasonal high water was found to be identical across the site. The Board recently approved a re-plat for the retention which may have solved the problem. What the Board may not know is that a plot plan has been created for every lot. It indicates the minimum level they can build on that lot. The minimum level for the footer is two feet above seasonal high water. He said that his client knows that some of the lots may

never get a basement; however, if the level is raised, and the level is met, it is fine. When the plat is signed and recorded, the client and County will be given a set. If someone applies for a permit to build on Weaver Woods, Lot 37, Section 2, there would be a plot plan indicating water level.

In terms of a reactive approach, Mr. Pharis stated that it is possible to get an indication about the need for a soil boring by looking at a soil map. He does not agree that everyone who obtains a building permit should have a soil boring. While he does not know the percentage of lots where ground water levels would present issues, he does believe it is possible to look at the soil map and say with some certainty when a soil boring should be conducted prior to the construction of a basement. He is a firm believer in allowing property owners to do what they want. He does not think the County should tell him that he cannot have a basement. He does think that the County should tell him that he may want to find out *if* he should have a basement, and encourage him to hire a soil scientist to make that determination. He acknowledges that creating a reactive approach is more problematic. While there are over 1,000 lots in Elkhart County until those lots are sold there will not be any subdivisions designed.

Mr. Pharis feels that the best approach utilizes caution and requests. A copy of the proposed Seasonal High Water Table Notification (Appendix 4) was given to Mr. Pharis to review. (*See page 9, item #12 for further discussion on this staff item.*)

11. The application for a zone map change from B-1 to B-3 for **Henry & Martha Towne** on property located on the West side of Nappanee Street, 146 ft. South of Pennsylvania Ave. in Baugo Township, was presented at this time.

It was noted that the public hearing had been closed, so a motion was made and seconded (Miller/Wolgamood) to reopen the public hearing at this time.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #1405SNappaneeSt-110404-1*. He explained that the new law now allows them to do a conditional rezoning in the form of deed restrictions (covenants). He noted that at the June meeting, details of what commitments they would need to see in order to recommend approval of this rezoning. A written commitment has been prepared, which the petitioner has signed and is now being presented for acceptance by the Plan Commission. In return, the staff is recommending approval to a B-3 zone.

Basically, Mr. Kanney said the commitment stipulates that outside of a B-1, the only permissible activity is working on cars and selling cars on the lot. The petitioner is restricted within the law. The petitioner is agreeable to the terms. He then explained that the form adopted by the Plan Commission last month within the Rules of Procedure makes the Plan Commission a party to the commitments so the petitioner cannot withdraw the commitments as soon as they are recorded without the Board's approval.

Mr. Kolbus explained that both he and Mr. Kanney went through the minutes independently and created forms which they combined into one form. It is his opinion that the form accurately reflects the concerns the Plan Commission expressed at the previous hearing.

A motion was made and seconded (*Sharkey/Burbrink*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Burbrink/Sharkey*) that the signed commitment be accepted by the Advisory Plan Commission. The motion was carried unanimously.

A motion was then made and seconded (*Holt/Burbrink*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from B-1 to B-3 be approved in accordance with the Staff Analysis with the signed commitment in place. With a unanimous roll call vote, the motion was carried.

12. Discussion on building homes in areas with high groundwater continued at this time. (*See page 5, item #10, for previous discussion on this matter.*)

Mr. Yoder noted that since a soil boring for septic is required for the majority of requests, a soil boring would not result in a substantial increased cost. Mr. Pharis pointed out that the seasonal high water is already shown on the septic boring. Mr. Kanney explained that the septic boring provides a general indication about the appropriateness of a basement. If a mound system or any type of special system is required, then it is a foregone conclusion that there will be a wet basement.

Mr. Yoder asked if it would be possible to use a combination of soil maps as an indicator and the soil borings that are done for septic. Mr. Kanney explained that the property owner has already decided on a lot, the contractor and a basement by the time they are seen. The problem with the disclaimer is that it is really too late. The County is not approached by property owners looking for a lot to build a basement on. The property owner says "here is the lot and here is the house, with a basement, that we are building on that lot." So it is a little too late once the subdivision has been approved.

Mr. Miller pointed out that construction has not yet started at that point. Mr. Kanney stated that the contractor would counter by saying that they cannot build the house that they want. Mr. Miller acknowledged that the enthusiasm to build the house may override reasonable thought processes; however, there has to be somebody who advises the property owner of the issue. He agrees that in lieu of dictating additional borings they should use what they already have.

Mr. Pharis suggested they remove "or" from the wording of owner of property or authorized agent. He suggests making it a requirement to put the name of the property owner on the form. There would be a signature by the owner or the agent. Mr. Kanney noted that when building permits are issued the contractor is normally the owner. Mr. Pharis noted that in subdivisions in particular, the lot is sold to the builder so that the builder owns the house and the lot. Mr. Pharis stated that there will never be 100% compliance in Elkhart County when it comes to obtaining a soil boring to find out about the feasibility of a basement. He explained that during his deposition an attorney said to him "Look, right on this plat it says you should not have basements." Mr. Pharis said that he responded by telling the attorney that the only people that ever looked at the plat prior to the deposition, were attorneys and some other surveyor. He acknowledged that nobody reads that stuff. The benefit of the disclaimer is that when a builder comes in and signs, they acknowledge that they have been advised of the water level. Should a property owner have a problem with water in their basement or if they sell their house and the next buyer has a problem with water in their basement, the signed form is in the file. It is not going to take the brightest attorney in Indiana to go after that builder and that builder's liability insurance to get a remedy for that owner. The problem is, without something like this, is the average homeowner does not have the money or the will to fight. He encourages implementing Appendix 4 immediately. After that, talks can begin regarding the proactive and reactive ways to solve the problems.

* (*It is noted that Mr. Sharkey was not present for the remainder of the meeting.*)

Mr. Kolbus agreed that the disclaimer should be involved somewhere in the process. Mr. Yoder stated that it does improve the standing of the property owner with a wet basement. While it

does not solve the problem, it at least puts the builder on notice. Mr. Kolbus advised that it is the County's role to inform.

Mr. Kolbus suggested they could implement the disclaimer immediately. He noted that Mr. Pharis provided some information on how to possibly use soil borings for the septic in part of the process. The staff may be able to come up with a way to include the disclaimer. It would take an amendment to the subdivision ordinance for the application of it to incorporate that.

Mr. Yoder agreed with Mr. Pharis' suggestion of deleting the word "or". If adopted today, Mr. Yoder wanted to know what they would be adopting. Mr. Kanney stated that procedure wise he would like to reflect on the discussion for a month. During that time they would dot i's and cross t's and decide the best course of action. Mr. Pharis suggested considering the Health Department, as they have a file for every house with a basement and a septic system. With enough time they can find the address of any property, if it exists. Things done in the last 10-15 years are good, but the records get a little weak 25-30 years back. That disclaimer attached to a septic permit will always be available. He does not want to see the staff trying to track this.

The consensus of the Board was that the proposed document is a good idea. They decided that it would again be discussed at the August meeting.

Mrs. Wolgamood sought clarification concerning what Mr. Pharis would like to see in the document. Mr. Pharis said that the property owner's name should be on the document, then whoever is signing it as the agent is going to have to have a title, i.e. builder, realtor, etc. Mr. Pharis explained that when he comes back to sue he wants to know who owned the house.

Mr. Burbrink wondered if the document would be required by everyone who gets a building permit and they are not just picking out certain soil types. Mr. Kanney said everyone getting a structural permit.

Mr. Yoder expressed a desire to take the first step now and then revisit the possibility of incorporating soil borings for septic to at least show areas that appear not to be the best places for basements.

13. See page 5, item #10 and page 9, item #12 on discussion regarding the Plan Commission's role and remedies of building homes in areas of high groundwater

14. See page 5, item #9 for the Board's action on hiring a new Plan Director.

15. A motion to adjourn the meeting was made by Mrs. Wolgamood and seconded by Mr. Miller. With a unanimous vote, the meeting was adjourned at 11:27 a.m.

Respectfully submitted,

Teresa McLain, Transcriber

Kathleen L. Wilson, Recording Secretary

Mike Yoder, Chairman